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Gregory D. Linden

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LU, KUEN S

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY D. LINDEN, BRENT R. SMITH,
NIDA K. ZADA, JONATHAN O. AIZEN,
GEOFFREY B. MACK, and AARON STEWART

Appeal 2007-3630
Application 10/050,579¹
Technology Center 2100

Decided: January 31, 2008

Before JAMES D. THOMAS, LANCE LEONARD BARRY, and
JAY P. LUCAS, *Administrative Patent Judges*.

Lucas, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed January 15, 2002. Appellants claim the benefit under 35 U.S.C. § 119 of provisional application 60/343797, filed 10/24/2001. Application is a continuation in part of 09/821,826 filed 3/29/01. The real party in interest is Alexa Internet.

STATEMENT OF CASE

Appellants appeal from a final rejection of claims 21 to 33 and 49 to 65 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b). Attendance at the oral hearing set for January 23, 2008, was waived by Appellants.

Appellants' invention relates to a method for monitoring a computer user's use of a web browser on his computer, noticing items (e.g., web pages or products) that are accessed by the user, and recommending additional items that may be of interest to the user based on those items that were accessed. In the words of the Appellants:

In one embodiment, a client program executes in conjunction with a web browser on a user's computer to enable the tracking of page viewing histories across multiple web sites. The client program identifies addresses (e.g., URLs) of web pages and/or web sites accessed by the user and transmits the sequence of identifications through the Internet to a server application executing on a recommendation system. Multiple client programs are preferably used by multiple users, therefore, the recommendation system is preferably able to accumulate sequences of web addresses accessed by multiple users during multiple browsing sessions and across multiple web sites. The sequences of web addresses will be referred to herein as browsing histories, click streams or usage trails. During a sequence of proximately visited addresses, users tend to view web pages with similar content. Click streams provide browsing data identifying adjacently or proximately visited addresses based upon which similar web pages or web sites can be effectively identified.

(Specification, page 4-5)

Claim 21 is exemplary:

21. A method for providing recommendations of items to a user, the method comprising:

using a client component which runs on the user's computer in conjunction with a web browser to identify a plurality of items accessed by the user through a plurality of web sites during a web browsing session;

selecting an additional item based at least upon a degree of relatedness between the additional item and each of the plurality of items; and

recommending the additional item to the user.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hosken	6,438,579 B1	Aug. 20, 2002
Ullmann	6,683,627 B1	Jan. 27, 2004
Bunch	6,795,856 B1	Sep. 21, 2004

REJECTIONS

Claims 21 to 26, 28 to 33, 49 to 59, and 60 to 65 stand rejected under 35 U.S.C. 103(a) for being obvious over Bunch in view of Hosken.

Claim 27 stands rejected under 35 U.S.C. 103(a) for being obvious over Bunch and Hosken further in view of Ullmann.

Appellants contend that the claimed subject matter is not rendered obvious by Bunch in combination with Hosken and separately in combination with Ullmann for failure to properly combine the references, and for failure of the references to teach the claimed limitations. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not

to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).²

We affirm the rejections.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether there is a legally sufficient justification for combining the disclosures of the references, especially with regard to the claimed client component that runs on the user's computer.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellants have invented a method for providing recommendations of items (including products or web pages; see the definitions in Spec. page 8) to users based on an analysis of other web pages viewed by the user. (Spec. pages 10, 11). Central to the claimed invention is a "client component" (Fig. 14, #1402), which is software resident on the user's computer linked to the browser that collects information from the web

² Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

sites or products the user browsed which information is used to make a recommendation of further items to the user. (See claim 21.)

2. The reference Hoskin teaches a system for likewise making recommendations of media items based on implicitly and explicitly derived data linked to the user's browser. (Col. 4, line 48.) A user profile derived from the web content viewed by the user is used for the generation of recommendations which are refined by the user, or acted upon directly. (Col 5, lines 35 to 45.) In the client's computer, the Web browser 14 is "augmented with plug-ins and applications supporting the presentation of streaming audio and video data as may be returned from the sever computer system **18**." (Col. 4, lines 40 *et seq.*)
3. The reference Bunch teaches placing a client side module on a Web browser of a user to monitor the web pages that a user (e.g., an employee) visits from that computer. (Col. 5, line 59 *et seq.*) The system monitors various parameters of the user's web searching, such as the time spent viewing various web pages. (Col. 7, line 27.)

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary

indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

References within the statutory terms of 35 U.S.C. § 103 qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986); *see also In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979) and *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). Furthermore,

“there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” . . . however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int’l v. Teleflex Inc., 127 S. Ct. 1727, 1741, 82 USPQ2d 1385 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

ANALYSIS

From our review of the administrative record, we find that the Examiner has presented prima facie cases for the rejections of Appellants’ claims under 35 U.S.C. § 103. The prima facie cases are presented on pages 5 to 22 of the Examiner’s Answer.

In opposition, Appellants present two main arguments with respect to exemplary claim 21. The first argument addresses the motivation to combine the references. We view the reference Hosken as teaching a system to monitor items viewed by the user's browser, and based on the items viewed, make a recommendation concerning additional items that may be of interest to the user. (See FF 2.) We note that Hosken teaches plug-ins and applications attached to the browser in the user's computer to facilitate presentation of information sent from the server system that includes the recommendations. Bunch teaches that a browser may be augmented with a client side module that collects information about the web pages being viewed by the user. Both Hosken and Bunch are, therefore, focused on the same field of endeavor (monitoring user actions in Web surfing) (*see In re Bigio* cited above). Though Bunch may be focused on a different problem than Hosken, his teachings are still relevant and combinable in a rejection of claim 21. (*See KSR Int'l Co. v. Teleflex, Inc.* cited above.) One of ordinary skill in this art would have looked to Bunch to study variations of how to collect the data for recommendations as taught by Hosken.

With regard to the Appellants' arguments concerning "expectation of success" and "teachings of claim limitations" (Brief, page 6) we endorse the Examiner's logic as expressed in the Answer, page 23. We do not find error in the Examiner's rejection of this exemplary claim 21.

Appellants have presented other arguments concerning the other claims, which arguments have been addressed by the Examiner in detail. (Examiner's Answer, pages 22 to 32.) We endorse and adopt the

Examiner's application of the relevant teachings of Hosken, Bunch and Ullmann.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 21 to 33 and 49 to 65.

DECISION

The Examiner's rejections of claims 21 to 33 and 49 to 65 are affirmed.

AFFIRMED

clj

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